



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lamanite Enterprises Corp.

File: B-235808

Date: June 20, 1989

DIGEST

Since the Small Business Administration has statutory authority to determine whether a firm is small and disadvantaged for purposes of eligibility for Department of Defense small disadvantaged business (SDB) set-asides, the General Accounting Office will not consider a protest challenging awardee's SDB eligibility status for award of a contract.

DECISION

Lamanite Enterprises Corp. protests the proposed award of a contract to SRM Manufacturing under invitation for bids (IFB) No. DAAA21-89-B-0019, issued by the Army as a total small disadvantaged business (SDB) set-aside to procure dummy containers. Lamanite challenges SRM's self-certification as an SDB.

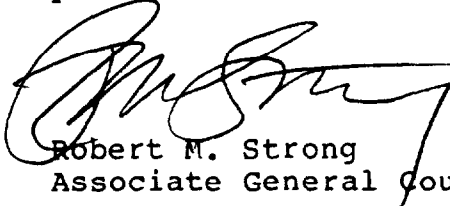
We dismiss the protest.

A total SDB set-aside of the type at issue here is provided for in regulations issued by the Department of Defense (DOD) to implement section 1207 of the National Defense Authorization Act of Fiscal Year 1987, Pub. L. No. 99-661, 100 Stat. 3973, and section 806 of Pub. L. No. 100-180, 101 Stat. 1126 (the DOD Authorization Act for Fiscal Years 1988 and 1989), which establish for DOD a goal of 5 percent for contracting with certain minority businesses and institutions, including small business concerns owned and controlled by socially and economically disadvantaged individuals. See DOD Federal Acquisition Regulation Supplement (DFARS), Part 219 (1988 ed.); C&J Service, B-230579.3, Sept. 23, 1988, 88-2 CPD ¶ 280.

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Section 1207(a)(1) of Pub. L. No. 99-661 defines the firms to which the statute applies by reference to section 8(d) of the Small Business Act, 15 U.S.C. § 637(d) (1982), which in turn defines the term "small business concern owned and operated by socially and economically disadvantaged individuals," and to the regulations issued under section 8(d). The Small Business Administration (SBA) has issued final regulations which provide for SBA to determine SDB status. See 54 Fed. Reg. 10271 (1989). Further, DOD's regulations require filing of an SDB eligibility protest with the contracting officer who then must forward the protest to the SBA for a conclusive determination. DFARS § 219.302.

Since the regulations clearly envision final and conclusive determinations by SBA of SDB status, it is up to the SBA, not our Office, to review Lamanite's protest challenging SRM's SDB eligibility status. See Caltech Service Corp., B-234424, May 1, 1989, 89-1 CPD ¶ _____. Accordingly, the protest is dismissed.



Robert M. Strong
Associate General Counsel